



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1995

Ms. Lydia González Gromatzky
Acting Director, Legal Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR95-1032

Dear Ms. Gromatzky:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34167.

The Texas Natural Resource Conservation Commission (the "commission") received a request for "copies of all documents, including electronic-mail records, dealing with House Bill 3193." You state that the commission has released to the requestor five categories of documents and two redacted memoranda that are responsive to the request. However, you claim that a portion of the responsive information is excepted from disclosure under sections 552.106, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

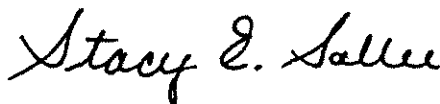
Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. The redacted portions of documents 1 and 2

consist of advice, opinion, or recommendations, and relate to the policymaking functions of the commission. Therefore, we conclude that the commission may withhold from disclosure the redacted portions of documents 1 and 2. Similarly, document 8 consists of advice, opinion, or recommendations relating to the policymaking functions of the commission and may be withheld in its entirety. While document 9 contains advice, opinion, or recommendations relating to the policymaking functions of the commission, it also contains facts that are severable from the opinion portion of the document. We have marked the document to indicate what information may be withheld. The remainder of document 9 may not be withheld.

Section 552.111 also excepts from required public disclosure a preliminary draft of a letter or document related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final document. *Id.*; see also Open Records Decision No. 559 (1990). We have reviewed the draft documents at issue and conclude that they relate to the policymaking processes of the governmental body. Therefore, documents 3 through 7 may be withheld from disclosure under section 552.111.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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Ref.: ID# 34167

Enclosures: Marked documents

¹For purposes of this ruling, we assume that the final version of document 4 has been released to the requestor.

cc: Mr. Ralph K.M. Haurwitz
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(w/o enclosures)